



# **STIC Search Report**

## **EIC 3700**

**STIC Database Tracking Number: 132314**

**TO: Andres Kashnikow**  
**Location: cp2 2a01**  
**Art Unit: 3700**  
**Monday, September 13, 2004**

**Case Serial Number: 10/625390**

**From: Terry Solomon**  
**Location: EIC 3700**  
**CP2-2C08**  
**Phone: 305-5932**

**Terrance.solomon@uspto.gov**

### **Search Notes**

**Litigation found:**

**Raymedica, Inc. v. Stoy, et al, District Court Minnesota**  
**01cv1814**

**Sources: Lexis/Nexis (Notice of Lit, opinion), Questel-Orbit (LitAlert) and Court Link (Updated docket)**

**US pat. 6264695**

Access DB# 137314

## SEARCH REQUEST FORM

Scientific and Technical Information Center

Requester's Full Name: ANDY KASHNIKOW Examiner #: 60484 Date: 9/13/04  
Art Unit: 3700 Phone Number 30 8-1137 Serial Number: 101625390  
Mail Box and Bldg/Room Location: CP2-2A01 Results Format Preferred (circle): PAPER DISK E-MAIL

**If more than one search is submitted, please prioritize searches in order of need.**

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Please provide a detailed statement of the search topic, and describe as specifically as possible the subject matter to be searched. Include the elected species or structures, keywords, synonyms, acronyms, and registry numbers, and combine with the concept or utility of the invention. Define any terms that may have a special meaning. Give examples or relevant citations, authors, etc, if known. Please attach a copy of the cover sheet, pertinent claims, and abstract.

Title of Invention: \_\_\_\_\_

Inventors (please provide full names): \_\_\_\_\_

Earliest Priority Filing Date: \_\_\_\_\_

*\*For Sequence Searches Only\* Please include all pertinent information (parent, child, divisional, or issued patent numbers) along with the appropriate serial number.*

LIT. SEARCH — U.S. PATENT No. 6,264,695

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### STAFF USE ONLY

	Type of Search	Vendors and cost where applicable
Searcher: <u>Solomon</u>	NA Sequence (#) _____	STN _____
Searcher Phone #: <u>305-5932</u>	AA Sequence (#) _____	Dialog _____
Searcher Location: <u>CP2 2C08</u>	Structure (#) <u>1</u>	<u>Questel/Orbit</u> <u>\$22.88</u>
Date Searcher Picked Up: <u>9-13-04</u>	Bibliographic _____	Dr.Link _____
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410268 (09) 6264695 July 24, 2001

Time of Request: September 13, 2004 12:58 PM EDT

Research Information:

Utility, Design and Plant Patents  
patno=6264695

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

6264695

July 24, 2001

Spinal nucleus implant

**REEXAM-LITIGATE:**

Raymedica, Inc. v. Stoy, et al, Filed Oct. 9, 2001, D.C. Minnesota, Doc. No. 01-1841JRT/FLN

**REISSUE:** July 23, 2003 - Reissue Application filed Ex. Gp.: 3738; Re. S.N. 10/625,390 (O.G. November 4, 2003)

**APPL-NO:** 410268 (09)

**FILED-DATE:** September 30, 1999

**GRANTED-DATE:** July 24, 2001

**ASSIGNEE-AT-ISSUE:** Replication Medical, Inc., West Conshohocken, Pennsylvania, 02

**ASSIGNEE-AFTER-ISSUE:** September 30, 1999 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., REPLICATION MEDICAL, INC. PRINCETON BUSINESS PARK, SUITE B-1 5 CRESCENT AVENUE ROCKY HILL NEW JERSEY 08553, Reel and Frame Number: 010300/0723  
September 1, 2000 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., REPLICATION MEDICAL, INC., A CORPORATION OF DELAWARE SUITE 1350 100 FRONT STREET WEST CONSHOHOCKEN PENNSYLVANIA 19428, Reel and Frame Number: 011077/0814

**LEGAL-REP:** Glynn, Esq, Kenneth P. - ##0

2002 U.S. Dist. LEXIS 19308, \*

Time of Request: September 13, 2004 01:00 PM EDT

## Research Information:

Patent Cases from Federal Courts and Administrative Materials  
6264695 or 6,264,695

**RAYMEDICA, INC., a Minnesota Corporation, Plaintiff, v. VLADIMIR STOY,  
REPLICATION MEDICAL, INC., a New Jersey Corporation, and REPLICATION  
MEDICAL, INC., a Delaware Corporation, Defendants.**

Civil No. 01-1841 (JRT/FLN)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

2002 U.S. Dist. LEXIS 19308

September 30, 2002, Decided

**DISPOSITION:** [\*1] Defendants' Motion to Dismiss for Lack of Personal Jurisdiction and/or Improper Venue, or Alternatively, for Transfer DENIED.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff, a Minnesota corporation sued defendants, a New Jersey company, a Delaware company, and their founder, for tortious interference with contract, and alleged that the companies and the founder interfered with its agreement to obtain certain patents from a non-party international corporation. The companies and the founder moved to dismiss for lack of personal jurisdiction and/or improper venue or, alternatively, for transfer.

**OVERVIEW:** The corporation and the international corporation entered into a contract under which the corporation purchased "hydrogel". The contract provided that the corporation received exclusive worldwide license of any of the international corporation's patents, knowledge, and improvements thereof, related to hydrogel technology. The founder developed improvements to the corporation's hydrogel technology, but did not did not assign those inventions to the international corporation. Instead, the founder applied for patents and assigned the patents to the companies. The court found that the corporation plainly alleged that the founder and the companies intentionally interfered with the contract between the international corporation and the corporation, and that they knew the brunt of that tortious interference would be felt by the corporation in

Minnesota. Such allegations were sufficient to find that the founder and the companies reasonably anticipated being haled into court in Minnesota to answer for their alleged actions, and to provide sufficient contacts consistent with notions of fair play and substantial justice. Thus, the court could assert personal jurisdiction over them.

**OUTCOME:** The founder and the companies' motion to dismiss for lack of personal jurisdiction and/or improper venue, or alternatively, for transfer was denied.

**LexisNexis(R) Headnotes**

*Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss*

[HN1] To survive a defendant's motion to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2), a plaintiff need only establish a prima facie case of personal jurisdiction. For purposes of the prima facie showing, all facts must be viewed in a light most favorable to the nonmoving party, and all factual conflicts must be resolved in that party's favor.

*Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction*

*Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits*

[HN2] Courts in the Eighth Circuit are guided by two primary rules when determining whether they have personal jurisdiction over a non-resident defendant. First, the facts must satisfy the forum state's long-arm statute,

and second, the exercise of personal jurisdiction over the defendant must not violate due process. Minnesota's long-arm statute extends jurisdiction to the fullest extent permitted by the United States Constitution. Minn. Stat. § 543.19.

***Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction***

[HN3] For a court to assert personal jurisdiction over a nonresident defendant, the defendant must have "minimum contacts" with the forum such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." Such contacts must be more than random, fortuitous, or attenuated. Sufficient contacts exist when the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there. In assessing the defendant's reasonable anticipation, there must be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. To determine whether the defendant has minimum contacts, courts look to five factors: (1) the nature and quality of the contacts with the forum state; (2) the quantity of the contacts with the forum state; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties. The first three factors are most important, and the last two are secondary factors.

***Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction***

[HN4] The United States Supreme Court has held that when a defendant directs intentional, tortious actions at a resident of the forum, the defendant may reasonably anticipate being haled into court in the forum to answer for its conduct.

***Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction***

[HN5] In cases alleging an intentional tort, however, the factors used to determine whether a defendant has minimum contacts do not provide a complete answer to the question of personal jurisdiction. Courts in the Eighth Circuit have applied the "effects test" to assert personal jurisdiction in cases where a defendant's minimum contacts might not otherwise be sufficient.

***Civil Procedure > Venue > General Venue***

[HN6] If personal jurisdiction exists at the commencement of an action, venue is proper under 28 U.S.C.S. § 1391. 28 U.S.C.S. § 1391 provides in relevant part that for purposes of venue, a defendant that is a corporation shall be deemed to reside in any judicial

district in which it is subject to personal jurisdiction at the time the action is commenced. 28 U.S.C.S. § 1391(c).

***Civil Procedure > Venue > Change of Venue in Federal Courts***

[HN7] To determine whether to transfer a case under 28 U.S.C.S. § 1404(a), courts must consider: (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interests of justice. Courts are not limited to considering those enumerated factors, but may base such determinations on a case-by-case evaluation of the particular circumstances in each case. A motion to transfer venue should be granted only where the defendant makes a clear showing that the action should be transferred, and it must be denied if the effect of a transfer would merely be to shift the inconvenience from one party to the other.

**COUNSEL:** Dean R. Karau, Cynthia A. Jokela Moyer, and Dulce J. Foster, FREDRIKSON & BYRON, P.A., Minneapolis, MN, for plaintiff.

Donald W. Niles and James H. Patterson, PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A., Minneapolis, MN, for defendants.

**JUDGES:** JOHN R. TUNHEIM, United States District Judge.

**OPINIONBY:** JOHN R. TUNHEIM

**OPINION:**

**MEMORANDUM OPINION AND ORDER  
DENYING DEFENDANTS' MOTION TO DISMISS  
OR TO TRANSFER VENUE**

Plaintiff Raymedica has sued defendants for tortious interference with contract and other claims, alleging that defendants interfered with its agreement to obtain certain patents from a non-party, Hymedix International, Inc. This matter is now before the Court on defendants' Motion to Dismiss for Lack of Personal Jurisdiction and/or Improper Venue or, alternatively, for Transfer. For the reasons discussed below, the Court now denies defendants' motion.

**BACKGROUND**

Plaintiff Raymedica is a Minnesota corporation that produces an implant device used in patients with spine impairments. A key component of Raymedica's device is "hydrogel, [\*2] " a material that Raymedica purchases from its manufacturer, Hymedix International ("Hymedix"), under a Raw Material Supply and Licensing Agreement (the "Raymedica-Hymedix

Agreement" or "Agreement"). This agreement was executed in 1994 and renewed in 2001. Under the Agreement, Raymedica receives exclusive worldwide license of any Hymedix patents, knowledge, and improvements thereof, related to hydrogel technology for use in devices that treat spinal disc problems. The Agreement also prohibits Hymedix from developing such devices on its own.

Defendant Vladimir Stoy ("Stoy"), a citizen of New Jersey, was chairman of Hymedix's Board of Directors in 1994, when Hymedix and Raymedica executed the Agreement. Stoy was a founder of Hymedix, n1 and is an inventor of the hydrogel technology that Hymedix licenses to Raymedica under the Agreement. Stoy and two co-inventors received a patent for hydrogel in 1990. Stoy entered into a consulting agreement with Hymedix in 1993, which ran until 1998 (the "First Consulting Agreement") and contained the following provision:

7.1 [Stoy] hereby agrees that all inventions, improvements, ideas, names, patents, trademarks, copyrights, and innovations [\*3] . . . which [Stoy] may originate, make or conceive in connection with his consultancy with [Hymedix], either alone or with others and whether or not during working hours or by the use of facilities of [Hymedix], and which relate to or are or may likely be useful in connection with the business or contemplated business of [Hymedix], shall be the exclusive property of [Hymedix] (whether or not patentable).

(Karau Aff. Ex. D at 4.) In 1998, Stoy and Hymedix executed a second agreement (the "Second Consulting Agreement"), which did not contain such a provision.

n1 Hymedix was founded as Kingston Technologies, Inc.

At some point during his consultancy for Hymedix--it is not clear whether under the First or Second Consulting Agreement--Stoy developed improvements to Hymedix's hydrogel technology. He invented a spinal disc implant using this improved hydrogel, but he did not assign these inventions to Hymedix. Stoy instead applied for patents for the improved hydrogel and the spinal disc implant. These [\*4] patents were ultimately issued as U.S. Patent Nos. 6,232,406 (the " '406 patent") and 6,264,695 (the " '695 patent"), respectively. Stoy later transferred these patents to defendants Replication Medical, Inc. (New Jersey) ("RMI-New Jersey"), and Replication Medical, Inc. (Delaware) ("RMI-Delaware").

RMI-New Jersey received the '695 patent, while RMI-Delaware received the '406 patent.

Stoy founded RMI-New Jersey in 1997, and founded RMI-Delaware in 2000. Stoy is an owner, officer, and director of each company. In August 2000, RMI-Delaware purchased substantially all of RMI-New Jersey's assets, including the '695 patent. Raymedica's complaint alleges that RMI-Delaware is now using the '695 and '409 patents to produce and market spinal disc products in competition with Raymedica.

It is undisputed that none of the defendants have resided, conducted business, or had any direct contacts in or with the State of Minnesota. Raymedica argues that Stoy knew of the Raymedica-Hymedix Agreement, and interfered with it by transferring the patents to his own companies, the RMI defendants, where he could freely use the patents to compete with Raymedica and others.

## ANALYSIS

### I. Motion [\*5] to Dismiss

#### A. Personal Jurisdiction

Defendants move to dismiss this action under Rule 12(b)(2) of the Federal Rules of Civil Procedure, arguing that the Court lacks personal jurisdiction over them. [HN1] To survive this motion, Raymedica need only establish a prima facie case of personal jurisdiction. See *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 612 (8th Cir. 1994). For purposes of the prima facie showing, all facts must be viewed in a light most favorable to the nonmoving party--here, Raymedica--and all factual conflicts must be resolved in that party's favor. See *Digi-Tel Holdings, Inc. v. Proteq Telecommunications, Ltd.*, 89 F.3d 519, 522 (8th Cir. 1996).

[HN2] Courts in the Eighth Circuit are "guided by two primary rules" when determining whether they have personal jurisdiction over a non-resident defendant. *Id.* First, the facts must satisfy the forum state's long-arm statute, and second, the exercise of personal jurisdiction over the defendant must not violate due process. *Id.* Minnesota's long-arm statute extends jurisdiction to the fullest extent permitted by the federal Constitution. Minn. Stat. § 543.19. [\*6] See *Soo Line R.R. Co. v. Hawker Siddeley Canada, Inc.*, 950 F.2d 526, 528 (8th Cir. 1991). The only question, therefore, is whether due process permits the exercise of personal jurisdiction over defendants in this case.

[HN3] For the Court to assert personal jurisdiction over a nonresident defendant, the defendant must have "minimum contacts" with the forum such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *International*

*Shoe Co. v. Washington*, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945) (citations omitted). Such contacts must be more than "random," "fortuitous," or "attenuated." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985).

Sufficient contacts exist when "the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 62 L. Ed. 2d 490, 100 S. Ct. 559 (1980). In assessing the defendant's reasonable anticipation, there must be "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits [\*7] and protections of its laws." *Burger King*, 471 U.S. at 475 (citation omitted).

To determine whether the defendant has minimum contacts, courts look to five factors: 1) the nature and quality of the contacts with the forum state; 2) the quantity of the contacts with the forum state; 3) the relation of the cause of action to the contacts; 4) the interest of the forum state in providing a forum for its residents; and 5) the convenience of the parties. *Land-O-Nod Co. v. Bassett Furniture Indus., Inc.*, 708 F.2d 1338, 1340 (8th Cir. 1983). The first three factors are most important, and the last two are "secondary factors." *Digi-Tel Holdings*, 89 F.3d at 523.

Defendants argue that they have absolutely no contacts with Minnesota. They further contend that the only Minnesota contacts relevant to this case, and upon which Raymedica focuses, were made by Hymedix, a non-party. Raymedica, however, argues that the Court does have personal jurisdiction under the "effects test" outlined by the United States Supreme Court in *Calder v. Jones*, 465 U.S. 783, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984). In *Calder*, [HN4] the Supreme Court held that when a defendant directs [\*8] intentional, tortious actions at a resident of the forum, the defendant may reasonably anticipate being haled into court in the forum to answer for its conduct. *See id.* at 790 (citing *World-Wide Volkswagen*, 444 U.S. at 297-98). Raymedica claims jurisdiction, alleging that defendants tortiously interfered with its contract with Hymedix, knowing that Raymedica would be injured in Minnesota. Defendants counter by claiming that the "effects test" does not apply, because Raymedica has still not shown the requisite Minnesota contacts.

The Court recognizes that the traditional five-factor test for minimum contacts does not strongly support personal jurisdiction over defendants here. [HN5] In cases alleging an intentional tort, however, these factors "do not provide a complete answer" to the question of personal jurisdiction. *Dakota Indus., Inc. v. Dakota*

*Sportswear, Inc.*, 946 F.2d 1384, 1390 (8th Cir. 1991). Indeed, courts in the Eighth Circuit have applied *Calder's* "effects test" to assert personal jurisdiction in cases where a defendant's minimum contacts might not otherwise be sufficient. In *Dakota Industries*, for example, the Eighth [\*9] Circuit found that personal jurisdiction existed over a defendant who allegedly intentionally infringed upon plaintiff's trademark. *Id.* at 1391. Although defendant's contacts with the forum state, South Dakota, would not have satisfied the "minimum contacts test," the court held that defendant's actions were "uniquely aimed" at South Dakota, and that the brunt of the injury would be felt there. *Id.* *See also Finley v. River North Records, Inc.*, 148 F.3d 913, 915-17 (8th Cir. 1998) (holding record company that fraudulently induced promotion of concert in forum state was subject to personal jurisdiction under *Calder* and *Dakota Industries*); *Janel Russell Designs, Inc. v. Mendelson & Assoc., Inc.*, 114 F. Supp. 2d 856, 862 (D. Minn. 2000) (applying the *Calder* test and holding that plaintiff's allegation of intentional copyright infringement was the most important factor in finding personal jurisdiction over defendant); *B.F. Goodrich Co. v. Auxitrol, S.A.*, 2001 U.S. Dist. LEXIS 21165, No. 00-43, 2001 WL 1640103 at \*\*4-5 (D. Minn. Nov. 30, 2001) (holding that defendant's alleged intentional infringement of plaintiff's trade dress, knowing that [\*10] plaintiff was a resident of forum, was sufficient to assert personal jurisdiction under *Calder* and *Dakota Industries*).

Defendants argue that *Calder's* "effects test" does not apply because Raymedica has not shown minimum contacts related to this case. Defendants first suggest that "for personal jurisdiction to be premised on the 'effects test' of *Calder* 'the plaintiff [must be] the focus of the activities of the defendants out of which the suit arises.'" (Def. Reply Br. at 15 (quoting *Calder*, 465 U.S. at 788) (brackets and emphasis defendants')). This (augmented) statement from *Calder* misrepresents the Supreme Court's holding in that case.

In *Calder*, Shirley Jones, a professional entertainer residing and working in California, sued a reporter and editor, both Florida residents, for allegedly libelous statements they published in the *National Enquirer*, a national magazine with its largest circulation in California. The reporter and editor, contending that the article had been prepared entirely in Florida, claimed they had insufficient contacts with California to support personal jurisdiction. In its preliminary review of the relevant [\*11] law, the Court discussed the doctrine of "minimum contacts:"

In judging minimum contacts, a court properly focuses on "the relationship

among the defendant, the forum, and the litigation." . . . The plaintiff's lack of "contacts" will not defeat otherwise proper jurisdiction . . . but they may be so manifold as to permit jurisdiction when it would not exist in their absence. Here, the plaintiff is the focus of the activities of the defendants out of which the suit arises.

*Calder*, 465 U.S. at 788 (citations omitted). This passage clearly shows that the Court's statement about "focus of the activities" was not a hard and fast requirement, as defendants claim, but merely dicta illustrating how minimum contacts with a forum can sustain personal jurisdiction. This dicta supported the Court's subsequent discussion of the case, and its ultimate annunciation of the "effects test"--that such "manifold" contacts can be found when defendants committed an "alleged wrongdoing intentionally directed at a California resident." *Id.* at 790.

Defendant next cites a variety of cases holding that defendants' minimum contacts with the forum must be the [\*12] same contacts that give rise to the cause of action. Defendant also argues that Raymedica impermissibly seeks to stitch together a "chain of contracts" to assert personal jurisdiction. Both of these arguments miss the point. None of the plaintiffs in the cases defendants cite alleged an intentional tort. *See, e.g., Minnesota Mining & Mfg. Co. v. Rauh Rubber, Inc.*, 943 F. Supp. 1117, 1122 (D. Minn. 1996) (holding, in a case where no intentional tort was alleged, that "the due process clause requires that the case 'arise out of or be related to'" defendant's minimum contacts with the forum); *Land-O-Nod*, 708 F.2d 1338; *Conwed Corp. v. Nortene, S.A.*, 404 F. Supp. 497, 502-03 (D. Minn. 1975) (holding that an alleged chain of contracts whereby plaintiff received contractual rights to certain patents was insufficient to assert personal jurisdiction over two non-resident corporations). This key allegation of an intentional tort takes the contacts analysis beyond the traditional factors to the additional considerations mandated by *Calder*. *See Dakota Indus.*, 946 F.2d at 1391 (holding that the "effects test" does not abandon [\*13] the traditional five-factor test, but that *Calder* requires considering additional factors when an intentional tort is alleged).

Here, as in *Dakota Industries*, *Finley*, and *Janel Russell Designs*, n2 plaintiff has alleged that Stoy and the RMI defendants intentionally interfered with a contract, knowing that the brunt of the injury would fall upon Raymedica in Minnesota. Under the criteria set forth in *Calder*, this is sufficient for defendants to "reasonably anticipate being haled into court" in

Minnesota. *See Calder*, 465 U.S. at 790; *Dakota Indus.*, 946 F.2d at 1391; *Finley*, 148 F.3d at 916.

n2 It should be noted that the holdings in these cases were not confined to the "effects test." In several cases, in fact, the effects test seems to be one of several independent grounds for asserting jurisdiction, often alongside findings that certain minimum contacts existed. The Court points out, however, that none of these cases depended on the findings of minimum contacts for their assertions of jurisdiction. Moreover, each case emphasizes that the "effects test" is an alternative and equal basis of jurisdiction. *See Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1391 (8th Cir. 1991) (resting its holding on the effects test, and noting that the holding is merely "bolstered" by the suggestion of some direct contacts with the forum); *B.F. Goodrich Co. v. Auxitrol, S.A.*, 2001 U.S. Dist. LEXIS 21165, No. 00-43, 2001 WL 1640103 at \*5 (D. Minn. Nov. 30, 2001) (using the term "moreover," stating that the effects test was an independent grounds for asserting jurisdiction). One case even held that the effects test was the "most important[]" reason to assert jurisdiction. *Janel Russell Designs, Inc. v. Mendelson & Assoc., Inc.*, 114 F. Supp. 2d 856, 862 (D. Minn. 2000). Moreover, the holding in *Calder* rested solely on the allegation of an intentional tort. *Calder v. Jones*, 465 U.S. 783, 790, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984). *See also Finley v. River North Records, Inc.*, 148 F.3d 913 (8th Cir. 1998) (basing jurisdiction solely upon the effects test).

[\*14]

Defendants next raise questions about Raymedica's apparent paraphrasing of the First Consulting Agreement. Defendants attempt to parse the language of Paragraph 7.1 of the Agreement, which governed assignment of inventions. Raymedica's submissions describe Paragraph 7.1 as requiring Stoy to assign to Hymedix all inventions made "while having access to Hymedix proprietary information." (Pl. Br. at 2.) Defendants point out, however, that Paragraph 7.1 actually provides that Stoy must assign all inventions created "in connection with his consultancy." (Def. Reply Br. at 6.) Defendants therefore claim that Raymedica makes no valid claim because its pleadings do not use these specific terms. The Court rejects this argument. While defendants point out one specific passage of Paragraph 7.1, they ignore other language in the section, which further requires Stoy to transfer all



inventions "which relate to or are or may be likely be useful in connection with the business or contemplated business of the Company . . . ." (Karau Aff. Ex. D at 3.) Raymedica's Complaint clearly alleges that Stoy violated this aspect of the Agreement with Hymedix, whether or not it uses the "magic words" defendants [\*15] feel are necessary.

Defendants' remaining arguments focus on the weakness of plaintiff's case for liability. For instance, defendants argue that the Complaint does not properly allege that Stoy invented the '695 and '409 patents under the First Consulting Agreement, which contained the Paragraph 7.1 assignment provision. Rather, defendants argue, Stoy may have created the inventions under Second Consulting Agreement, which had no such provision. If this were true, Stoy could have freely kept the patents, and Raymedica's case would be moot. This argument splits hairs. The Complaint clearly alleges that Stoy transferred the patents to RMI-New Jersey and RMI-Delaware, when he was in fact obligated to transfer them to Hymedix. (See Complaint PP48-59.) Moreover, plaintiff alleges that Stoy's obligation continued as long as he consulted for Hymedix, no matter which consulting agreement was in effect. (See Complaint PP38, 41.)

Evidence may be produced through discovery or at trial that will reveal exactly when exactly Stoy created the invention, and which may support or undermine Raymedica's claims. Such evidence does not concern the Court at this stage of the case. Factual questions [\*16] about Raymedica's allegations may exist, but for this motion, Raymedica need only make a prima facie showing of jurisdiction, and the Court must construe all facts in its favor. *Digi-Tel Holdings*, 89 F.3d at 522. Raymedica has plainly alleged that Stoy and the RMI defendants intentionally interfered with the contract between Hymedix and Raymedica, a Minnesota company, and that defendants knew the brunt of that tortious interference would be felt by Raymedica in Minnesota. *Calder* and its progeny clearly hold that such allegations are sufficient to find that defendants "reasonably anticipated being haled into court" in Minnesota to answer for their alleged actions, and to provide sufficient contacts consistent with notions of fair play and substantial justice. The Court finds that it may assert personal jurisdiction over defendants, and their motion to dismiss for lack of personal jurisdiction will therefore be denied.

### B. Improper Venue

Defendants also move to dismiss for improper venue under Rule 12(b)(3) of the Federal Rules of Civil Procedure. [HN6] If personal jurisdiction exists at the commencement of an action, venue is proper under 28 U.S.C. § 1391. [\*17] This section provides in relevant

part: "for purposes of venue . . . a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c). Because Raymedica has made a prima facie showing of personal jurisdiction, venue is proper in the District of Minnesota. See *Dakota Indus.*, 946 F.2d at 1392. Defendants' motion must therefore also be denied on this ground.

### II. Motion to Transfer Venue

Defendants move alternatively to transfer venue under 28 U.S.C. § 1404(a). [HN7] To determine whether to transfer a case, courts must consider: (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interests of justice. *Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 119 F.3d 688, 691 (8th Cir. 1997). Courts are not limited to considering these enumerated factors, but may base such determinations on a case-by-case evaluation of the particular circumstances in each case. *Id.* A motion to transfer venue should be granted only where the defendant makes a clear showing [\*18] that the action should be transferred, and it must be denied if the effect of a transfer would merely be to shift the inconvenience from one party to the other. *Prestige Hospitality Group, Inc. v. Flagship Services Corp.*, 2001 U.S. Dist. LEXIS 23719, Civ. No. 00-1453, 2001 WL 228418 at \*6 (D. Minn. Feb 27, 2001); *Norval Indus., Inc. v. Superior Cos.*, 515 F. Supp. 895, 899 (D. Minn. 1981).

Defendants argue that convenience of the parties and witnesses favor transfer to the Eastern District of Pennsylvania or the District of New Jersey. They claim that the only factor favoring Minnesota as a forum is that Raymedica resides here, and note that all defendants live in one of those districts, that defendants' business records are in those two districts, and all the non-parties that Raymedica has subpoenaed reside in New Jersey. Defendants further argue that the interests of justice, represented by judicial economy, would be served by transfer, because most parties are local to the Districts of Eastern Pennsylvania and New Jersey. Raymedica contends that defendants merely seek to shift the inconvenience of venue to it.

After considering the factors outlined in *Terra International* [\*19] and the relevant circumstances in this case, the Court concludes that defendants have not made the required clear showing to support transfer of venue. Although defendants raise several points that would make another forum more convenient for them, the Court finds defendants have not shown that transfer would do anything but shift the inconvenience of venue from them to Raymedica. Accordingly, the Court will deny plaintiff's alternative motion to transfer venue.

**ORDER**

Based on the foregoing, all the records, files, and proceedings herein, **IT IS HEREBY ORDERED** that defendants' Motion to Dismiss for Lack of Personal Jurisdiction and/or Improper Venue, or Alternatively, for Transfer [Docket No. 9] is **DENIED**.

DATED: September 30, 2002 at Minneapolis,  
Minnesota.

JOHN R. TUNHEIM

United States District Judge

(C) QUESTEL 1994  
QUESTEL.ORBIT (TM) 1998

Selected file: PLUSPAT  
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**\*\* SS 1: Results 1**  
**PRT SS 1 MAX 1 LEGALALL**

1 / 1 PLUSPAT - @QUESTEL-ORBIT - image

**Patent Number :**

US6264695 B1 20010724 [US6264695]

**Title :**

(B1) Spinal nucleus implant

**Patent Assignee :**

(B1) REPLICATION MEDICAL INC (US)

**Patent Assignee :**

Replication Medical, Inc., West Conshohocken PA [US]

**Inventor(s) :**

(B1) STOY VLADIMIR A (US)

**Application Nbr :**

US41026899 19990930 [1999US-0410268]

**Priority Details :**

US41026899 19990930 [1999US-0410268]

**Intl Patent Class :**

(B1) A61F-002/44

**EPO ECLA Class :**

A61F-002/44B

A61L-027/16

A61L-027/18

A61L-027/20

A61L-027/44

A61L-027/50

A61L-027/52

**EPO ICO Class :**

K61F-002/00W89

K61F-002/44D

**US Patent Class :**

ORIGINAL (O) : 623017160

**Document Type :**

Corresponding document

**Citations :**

US3875595; US4107121; US4220152; US4309777; US4331783; US4337327;

US4349921; US4369294; US4370451; US4379874; US4420589; US4636217;

US4714469; US4759769; US4772287; US4837111; US4863476; US4904260;

US4904261; US4911718; US4943618; US5047055; US5053034; US5171280;

US5192326; US5252692; US5489308; US5534028; US5674295; US5674296;

US5676701; US5716415; US5824093; US5824094; US5865846; US5879385;

US5976186; US6110210

**Publication Stage :**

(B1) U.S. Patent (no pre-grant pub.) after Jan. 2, 2001

**Abstract :**

The present invention is a spinal nucleus implant for replacement of at least a portion of nucleus pulposus tissue removed from a spinal disc of a living vertebrate to restore function of the spinal disc and related vertebral joint. The implant is an anisotropically swellable, biomimetic xerogel plastic, having a two phase structure with a hydrophobic phase having high crystallinity and low water content and with hydrophilic phase having low crystallinity and high water content and having a negatively charged lubricious surface. The xerogel plastic is capable of rehydration and of osmotic movement of liquid therethrough in response to osmotic pressure change to thereby increase and decrease liquid

content in its hydrated state. The present invention also relates to surgical implant procedures utilizing this spinal nucleus implant.

**Update Code :**

2001-31

1 / 1 LGST - ©EPO

**Patent Number :**

US6264695 B1 20010724 [US6264695]

**Application Number :**

US41026899 19990930 [1999US-0410268]

**Action Taken :**

20000901 US/AS-A

ASSIGNMENT

OWNER: REPLICATION MEDICAL, INC., A CORPORATION OF DELAWA; EFFECTIVE

DATE: 20000809

ASSIGNMENT OF ASSIGNORS INTEREST;ASSIGNOR:REPLICATION MEDICAL, INC., A CORPORATION OF NEW JERSEY;REEL/FRAME:011077/0814

20031104 US/RF-A

REISSUE APPLICATION FILED

EFFECTIVE DATE: 20030723

**Update Code :**

2004-30

1 / 1 CRXX - ©CLAIMS/RRX

**Patent Number :**

6,264,695 A 20010724 [US6264695]

**Patent Assignee :**

Replication Medical Inc

**Actions :**

20030723 REISSUE REQUESTED

ISSUE DATE OF O.G.: 20031104

REISSUE REQUEST NUMBER: 10/625390

EXAMINATION GROUP RESPONSIBLE FOR REISSUEPROCESS: 3738

Reissue Patent Number:

1 / 1 LITA - ©Thomson Derwent

**Accession Number :**

P2001-44-27

**File Segment :**

PATENT (P)

**Patent Number :**

US4943618 19900724 (Utility)

**Plaintiffs :**

Raymedica Incorporated

**Defendants :**

Stoy, et al

**Court :**

MN

**Docket Number :**

01-1841JRT/FLN

**Filing Date :**

2001-10-09

**Action :**

A complaint was filed.


**Other Patents Nbrs :**

US6264695

US6232406

**Session finished: 13 SEP 2004 Time 19:03:41**

**QUESTEL.ORBIT thanks you. Hope to hear from you again soon.**

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To view the patents at issue in this case, [click here](#). (No charge!)

### US District Court Civil Docket

US District Court for the District of Minnesota  
(Minneapolis)

0:01cv1841

Raymedica, Inc v. Stoy, et al

This case was retrieved from the court on Monday, September 13, 2004

Date Filed: 10/09/2001  
Assigned To: Senior Judge David S Doty  
Referred To: Magistrate Judge Janie S Mayeron  
Nature of suit: Patent (830)  
Cause: Trademark Infringement  
Lead Docket: None  
Other Docket: None  
Jurisdiction: Federal Question

Class ATYADM,  
Code: CLOSED, PROTO,  
TRDMRK  
Closed: Yes  
Statute: [15:1114](#)  
Jury  
Demand: None  
Demand  
Amount: \$0

#### Litigants

Raymedica, Inc, A Minnesota Corporation  
PLAINTIFF

#### Attorneys

Cynthia A Jokela  
[COR LD NTC]  
[Fredrikson & Byron](#)  
200 S 6TH St Ste 4000  
Minneapolis , MN 55402-1425  
USA  
612-492-7000  
Fax : 6124927077  
Email: [Cmoyer@fredlaw.com](mailto:Cmoyer@fredlaw.com)

Dean R Karau  
[COR LD NTC]  
[Fredrikson & Byron](#)  
200 S 6TH St Ste 4000  
Minneapolis , MN 55402-1425  
USA  
612-492-7000  
Fax : 6124927077

Email: Dkarau@fredlaw.com

Dulce J Foster  
[COR LD NTC]  
Fredrikson & Byron  
200 S 6TH St Ste 4000  
Minneapolis , MN 55402-1425  
USA  
612-492-7110  
Fax : 612-492-7077  
Email: Dfoster@fredlaw.com

Emily E Duke  
[COR LD NTC]  
Fredrikson & Byron  
200 S 6TH St Ste 4000  
Minneapolis , MN 55402-1425  
USA  
612-492-7000  
Fax : 6124927077  
Email: Eduke@fredlaw.com

v.

Vladimir Stoy  
DEFENDANT

Donald Wayne Niles  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA  
(612) 349-5740  
Fax : 6123499266  
Email: Niles@ptslaw.com

James Hugh Patterson  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA  
(612) 349-5740  
Fax : 6123499266  
Email: Patterson@ptslaw.com

John J Soroko  
[COR LD NTC]  
Duane Morris  
One Liberty PL  
Philadelphia , PA 19103-7396  
USA  
215-979-1000

Kelly D Eckel  
[COR LD NTC]  
Duane Morris  
One Liberty PL  
Philadelphia , PA 19103-7396  
USA

215-979-1000  
Fax : 12159791020

Norman M Abramson  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA  
(612) 349-3014  
Fax : 612-349-9266  
Email: Abramson@ptslaw.com

Replication Medical, Inc, A New Jersey  
Corporation  
DEFENDANT

Donald Wayne Niles  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA  
(612) 349-5740  
Fax : 6123499266  
Email: Niles@ptslaw.com

James Hugh Patterson  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA  
(612) 349-5740  
Fax : 6123499266  
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John J Soroko  
[COR LD NTC]  
Duane Morris  
One Liberty PL  
Philadelphia , PA 19103-7396  
USA  
215-979-1000

Kelly D Eckel  
[COR LD NTC]  
Duane Morris  
One Liberty PL  
Philadelphia , PA 19103-7396  
USA  
215-979-1000  
Fax : 12159791020

Norman M Abramson  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA



Replication Medical, Inc, A Delaware  
Corporation  
DEFENDANT

(612) 349-3014  
Fax : 612-349-9266  
Email: Abramson@ptslaw.com

Donald Wayne Niles  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA  
(612) 349-5740  
Fax : 6123499266  
Email: Niles@ptslaw.com

James Hugh Patterson  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA  
(612) 349-5740  
Fax : 6123499266  
Email: Patterson@ptslaw.com

John J Soroko  
[COR LD NTC]  
Duane Morris  
One Liberty PL  
Philadelphia , PA 19103-7396  
USA  
215-979-1000

Kelly D Eckel  
[COR LD NTC]  
Duane Morris  
One Liberty PL  
Philadelphia , PA 19103-7396  
USA  
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Norman M Abramson  
[COR LD NTC]  
Patterson Thuyente Skaar & Christensen  
4800 IDS Ctr  
80 8TH St S  
Minneapolis , MN 55402-1314  
USA  
(612) 349-3014  
Fax : 612-349-9266  
Email: Abramson@ptslaw.com

Date	#	Proceeding Text
10/09/2001	<u>1</u>	COMPLAINT - Summons issued. Assigned to Judge John R. Tunheim per Patent (Trademark) list and referred to Magistrate Judge Franklin L. Noel, rcpt. no. 252746 22 pg(s) (DFL) (Entered: 10/09/2001)

- 10/09/2001     2     MOTION by plaintiff for limited expedited discovery and for order preserving evidence and for non-destruction of documents ( to Magistrate Judge Franklin L. Noel ) 2pg(s) (DFL) (Entered: 10/09/2001)
- 10/09/2001     3     MEMORANDUM by plaintiff in support of motion for limited expedited discovery [2-1], of motion for order preserving evidence and for non-destruction of documents [2-2] 6pg(s) (DFL) (Entered: 10/09/2001)
- 10/09/2001     4     AFFIDAVIT of Dean Karau regarding motion for limited expedited discovery [2-1], regarding motion for order preserving evidence and for non-destruction of documents [2-2] 3pg(s) (DFL) (Entered: 10/09/2001)
- 10/09/2001     =     Mailed copy of complaint to Trademark Office (DFL) (Entered: 10/09/2001)
- 10/18/2001     5     NOTICE by plaintiff setting hearing for motion for limited expedited discovery [2-1] at 10:00 a.m. on 10/23/01, setting hearing for motion for order preserving evidence for non-destruction of documents ( to Magistrate Judge Franklin L. Noel ) [2-2] at 10:00 a.m. on 10/23/01 2pg(s) (DFL) (Entered: 10/22/2001)
- 10/23/2001     6     MINUTES: ( Magistrate Judge Franklin L. Noel / 01 to 185) granting motion for limited expedited discovery [2-1], granting motion for order preserving evidence and for non-destruction of documents [2-2] 1pg(s) (DFL) (Entered: 10/25/2001)
- 10/23/2001     7     ORDER ( Magistrate Judge Franklin L. Noel / 10/23/01) granting plaintiff's motion for limited expedited discovery on a limited basis[2-1], granting plaintiff's motion for order preserving evidence and for non-destruction of documents iduring the pendency of this litigation and for 90 days after entry of a final order [2-2] 2pg(s) (cc: all counsel) (DFL) (Entered: 10/25/2001)
- 11/01/2001     8     STIPULATION AND ORDER ( Magistrate Judge Franklin L. Noel ) that defendant, Replication Medical has to and including 11/19/01 to answer the complaint 2pg(s) (cc: all counsel) (DFL) (Entered: 11/03/2001)
- 11/01/2001     =     PRO HAC VICE SENT to out of state attorney: John J. Soroko (DFL) (Entered: 11/03/2001)
- 11/19/2001     9     MOTION by defendants to dismiss for lack of jurisdiction and/or improper venue , or to transfer case ( to Judge John R. Tunheim ) 2pg(s) (SJH) (Entered: 11/23/2001)
- 11/19/2001     10     MEMORANDUM by defendants in support of motion to dismiss for lack of jurisdiction and/or improper venue [9-1], of motion to transfer case [9-2] 15pg (s) (SJH) (Entered: 11/23/2001)
- 11/19/2001     11     AFFIDAVIT of Charles G. Hadley regarding motion to dismiss for lack of jurisdiction and/or improper venue [9-1], regarding motion to transfer case [9-2] 6pg(s) (SJH) (Entered: 11/23/2001)
- 11/19/2001     12     AFFIDAVIT of Vladimir Stoy regarding motion to dismiss for lack of jurisdiction and/or improper venue [9-1], regarding motion to transfer case [9-2] 6pg(s) (SJH) (Entered: 11/23/2001)
- 11/19/2001     13     AFFIDAVIT of Jeffrey F. O'Donnell regarding motion to dismiss for lack of jurisdiction and/or improper venue [9-1], regarding motion to transfer case [9-2] 5pg(s) (SJH) (Entered: 11/23/2001)
- 11/19/2001     =     NOTICE SENT to out of state attorney: John J. Soroko (SJH) (Entered: 11/23/2001)
- 11/30/2001     14     LETTER to the Honorable Judge Tunheim from pltf re the agreement of the parties to stay the deft's pending motion to dismiss pending the completion of limited discovery. (1pg(s) (DDB) (Entered: 12/05/2001)
- 07/15/2002     15     MEMORANDUM by plaintiff in opposition to motion to dismiss for lack of jurisdiction and/or improper venue [9-1], to motion to transfer case [9-2] 15pg (s) (DFL) (Entered: 07/18/2002)
- 07/15/2002     16     AFFIDAVIT of Anthony C. Phillips regarding motion to dismiss for lack of jurisdiction and/or improper venue [9-1], regarding motion to transfer case [9-

- 2] 4+pg(s) (DFL) (Entered: 07/18/2002)
- 07/15/2002 17 AFFIDAVIT of Dean R. Karau regarding motion to dismiss for lack of jurisdiction and/or improper venue [9-1], regarding motion to transfer case [9-2] 4+ pg(s) (DFL) (Entered: 07/18/2002)
- 07/29/2002 18 REPLY MEMORANDUM by defendants in further support motion to dismiss for lack of jurisdiction and/or improper venue [9-1], to motion to transfer case [9-2] 17pg(s) (DFL) (Entered: 08/02/2002)
- 07/29/2002 19 AFFIDAVIT of John J. Soroko regarding motion to dismiss for lack of jurisdiction and/or improper venue [9-1], regarding motion to transfer case [9-2] 10pg(s) (DFL) (Entered: 08/02/2002)
- 09/30/2002 20 MEMORANDUM, OPINION, AND ORDER: ( Judge John R. Tunheim / 9/30/02) denying defendants' motions to dismiss for lack of jurisdiction and/or improper venue [9-1] and to transfer case [9-2] 14pg(s) (cc: all counsel) (DFL) (Entered: 10/01/2002)
- 10/10/2002 21 NOTICE OF INITIAL PRETRIAL CONFERENCE ( Magistrate Judge Franklin L. Noel / 10/10/02) initial pretrial conference set for 9:45 a.m. on 11/1/02 4pg (s) (cc: all counsel) (DFL) (Entered: 10/20/2002)
- 10/15/2002 22 ANSWER by defendants 23pg(s) (DFL) (Entered: 10/20/2002)
- 10/17/2002 23 PETITION AND ORDER for admission pro hac vice ( Clerk Richard D. Sletten ) on behalf of defendants by Kelly D Eckel and John J. Soroko 2pg(s) (DFL) (Entered: 10/30/2002)
- 10/23/2002 24 NOTICE by defendant Vladimir Stoy, defendant Replication Med (NJ), defendant Replication Med (DE) of association of counsel Norman M Abramson (MMC) (Entered: 10/23/2002)
- 10/30/2002 25 REPORT OF RULE 26(f) MEETING. 8pg(s) (RJL) (Entered: 02/21/2003)
- 11/05/2002 26 MINUTES: (Magistrate Judge Franklin L. Noel) re: PRETRIAL CONFERENCE 3pg(s) (SEA) (Entered: 11/14/2002)
- 11/07/2002 27 SCHEDULING ORDER ( Magistrate Judge Franklin L. Noel / 11/7/02) ; amd complaint set for 3/5/03 ; discovery set for 6/1/03 ; non-dispositive motions set for 9/1/03 ; dispositive motions set for 11/1/03 ; ready for trial set for 12/1/03 3pg(s) (cc: counsel) (SEA) (Entered: 11/14/2002)
- 12/31/2002 28 RULE 7.1 DISCLOSURE STATEMENT by plaintiff Raymedica, Inc. that 1. Raymedica has no parent corporation; 2. More than 10% of Raymedica's stock is owned by a nonpublic entity that upon information and belief, is a wholly owned subsidiary of Medtronic, Inc. and 3. Raymedica is not aware of any other corporation that it is a required to disclose pursuant to Rule 7.1 2pg (s) (JMH) (Entered: 01/08/2003)
- 02/11/2003 29 NOTICE ( Clerk Richard D. Sletten / 02/11/03) Case referred to Magistrate Judge Janie S. Mayeron 1pg (cc: all counsel) (JGG) (Entered: 02/12/2003)
- 04/01/2003 30 JOINT MOTION by plaintiff and defendants' to modify pretrial schedule ( to Magistrate Judge Janie S. Mayeron ) . 3 pg(s) (ARB) (Entered: 04/03/2003)
- 04/01/2003 31 STIPULATION AND ORDER ( Magistrate Judge Janie S. Mayeron ), Re: production of documents. 3pg(s) (cc: all counsel) (DFL) (Entered: 04/03/2003)
- 04/01/2003 32 STIPULATED PROTECTIVE ORDER ( Magistrate Judge Janie S. Mayeron ) 13pg(s) (cc: all counsel) (DFL) (Entered: 04/03/2003)
- 04/01/2003 33 ORDER OF RECUSAL ( Judge John R. Tunheim / 4/1/03) Case reassigned to Senior Judge David S. Doty per Patent (Trademark) list . (MJ Mayerson remains the referral judge). 1pg(s) (cc: all counsel) (DFL) Modified on 04/09/2003 (Entered: 04/08/2003)
- 04/03/2003 34 ORDER Regarding Modified Pretrial Schedule ( Magistrate Judge Janie S. Mayeron / 4/2/03) [29-1] discovery set for 11/2/03 ; non-dispositive motions set for 11/6/03 ; dispositive motions set for 1/1/04 ; ready for trial set for

2/1/04 2pg(s) (cc: all counsel) (SJH) (Entered: 04/08/2003)

08/14/2003    34    STIPULATION AND ORDER ( Senior Judge David S. Doty ) that this matter is dismissed with prejudice, each party to bear their own costs, disbursements and attorneys' fees. 2pg(s)(cc: all counsel) ( (Entered: 08/18/2003)

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